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a third lot, the vendor sold unbleached goods to the vendee and delivered to U., who put them in the vendee's name, and according to a previous arrangement with the vendee bleached at the vendee's direction and expense, and delivered a part. *Held*, that the right of stoppage *in transitu* continued on all the lots. *In re Poe Manufacturing Co.*, 80 S. E. 194 (S. C.).

The decision on the first claim is clearly correct. If a bailee without notice of the sale holds goods for the vendor, the latter's lien may be exercised, as the goods remain in his constructive possession. *M'Ewan* v. *Smith*, 2 H. L. Cas. 309; *In re Batchelder*, 2 Low. 245, 2 Fed. Cas. No. 1099. After the bailee is notified to deliver to the purchaser, the right of stoppage *in transitu* exists until the bailee attorns to the buyer. *Rowe* v. *Pickford*, 8 Taunt. 83; *Norfolk Hardwood Co.* v. *New York Central & H. R. R. Co.*, 202 Mass. 160, 88 N. E. 664. The partial delivery of the second lot suggests attornment, but is not conclusive. *Ex parte Cooper*, 11 Ch. D. 68. But attornment appears in the bailee's holding the remainder subject to the vendee's order. *Guilford* v. *Smith*, 30 Vt. 49. As to the third lot, the bailee by previous agreement held subject to the buyer's directions from the very start. *Cf. Scott* v. *Pettit*, 3 B. & P. 469; *In re Batchelder*, *supra*. The bailee was under a duty also to bleach the goods. A bailee's additional duty to the purchaser other than carriage is such an attornment as to end the transit. See *Bethel* v. *Clark*, 20 Q. B. D. 615, 617; *Harris* v. *Pratt*, 17 N. Y. 249, 263; WILLISTON, SALES, § 524; 23 HARV. L. REV. 142. This has been applied where the extra duty was forwarding elsewhere. *Norfolk Hardwood Co.* v. *New York Central & H. R. R. Co.*, *supra*. The duty to bleach seems *a fortiori* such a submission to the purchaser as to terminate the vendor's rights.

SPECIFIC PERFORMANCE — NEGATIVE CONTRACTS — CONTRACT TO BUY BEER FROM PLAINTIFF ONLY. — The defendant contracted to buy from the plaintiff all the beer used in the defendant's saloon for a certain period, and not to buy from any one else. The contract contained a provision for liquidated damages. The plaintiff seeks to enjoin the defendant from buying of any other dealer. *Held*, that the injunction will not be granted. *Bartholemae & Roesing Brewing Co.* v. *Modzelewski*, 47 Nat. Corp. Rep. 686 (Ill. App. Ct.).

The question of enforcing a negative contract in regard to land has usually arisen in connection with restrictions that are really equitable servitudes. In such cases no damage would be necessary for relief. The plaintiff is protected by some courts because the covenant will not run at law. *Catt* v. *Tourle*, 4 Ch. App. 654. The better theory is that the servitude is a property right, a forced sale of which would be unjust. (See criticism, in this issue of the Review, of the Illinois case of *Van Sand* v. *Rose*, 103 N. E. 194, 27 HARV. L. REV. 494.) Such a servitude could be imposed on the defendant's business as well as on his land. *Wilkes* v. *Spooner*, 27 T. L. R. 157. It is, however, the intent of the parties that creates these servitudes, as inferred from the agreement and the surrounding circumstances. *Peck* v. *Conway*, 119 Mass. 546. As the court in the principal case points out, no such intent is apparent here, so there is no servitude, but a mere negative contract. The adequacy of the legal remedy is therefore important. The damage that will be caused the plaintiff by the defendant's buying from competitors will exceed the damage from the mere loss of the sale, and will be purely conjectural. The presence of a provision for liquidated damages will not prevent specific performance. *Diamond Match Co.* v. *Roeber*, 106 N. Y. 473, 13 N. E. 419. It is therefore submitted that the injunction should have been granted.

THEATRES — RIGHTS OF TICKET HOLDER. — The plaintiff, during the course of a moving picture performance, for which he had purchased a reserved seat, was ejected from the defendant's theatre, with no unnecessary force. He brings

an action for assault and battery. *Held*, that the plaintiff may recover. *Hurst* v. *Picture Theatres, Ltd.*, 30 T. L. Rep. 98 (K. B. Div., Nov. 18, 1913).

By the purchase of his ticket the plaintiff gets no legal property right; for there is no intention to create a lease, and it does not seem that the possession is of such a nature as to create this interest. *Wood* v. *Leadbitter*, 13 M. & W. 838. *Cf. White* v. *Maynard*, 111 Mass. 250; *Hancock* v. *Austin*, 14 C. B. N. S. 634. *Contra*, *Drew* v. *Peer*, 93 Pa. 234. The ticket holder has a license to enter the theatre and remain there. But since it is not coupled with an interest, it is revocable at the will of the licensor, although consideration has been paid. *Hewlins* v. *Shippam*, 5 B. & C. 221. On revocation the licensee becomes a trespasser. *Ruggles* v. *Lesore*, 24 Pick. (Mass.) 187. But, in a jurisdiction like that of the principal case, where there is a fusion of law and equity, if the plaintiff's license gives him a right of which equity will take cognizance it would seem enough to defeat the defendant's justification for the ejectment. See SALMOND, TORTS, 3 ed., p. 247. But obviously no equitable servitude can be imposed by this contract, even though the requisite intent to create it be admitted. The contract neither imposes a restriction, nor is there any property to which the benefit of the servitude could attach. *Dana* v. *Wentworth*, 111 Mass. 291. Also specific performance of the contract, as such, would be denied under these facts, because of the substantial adequacy of legal damages and the trivial nature of the contract. *Carter* v. *Ferguson*, 58 Hun (N. Y.) 569. Since a theatre, although licensed by the state, is not a public service company, no tort liability can be based on the mere failure to perform the affirmative duty undertaken. *Purcell* v. *Daly*, 19 Abb. N. C. (N. Y.) 301. The court therefore seems to have erred in permitting recovery in tort.

TITLE, OWNERSHIP, AND POSSESSION — POSSESSION — RIGHT OF ADVERSE POSSESSION TO RECOVER DAMAGES FOR PERMANENT DEPRECIATION. — The plaintiff, in adverse possession of land, seeks to recover for permanent injuries caused by the defendants' diverting a watercourse. *Held*, that the plaintiff cannot recover. *La Salle County Carbon Coal Co.* v. *Sanitary Dist. of Chicago*, 103 N. E. 175 (Ill.).

The better view seems to be that one in adverse possession of land has title as regards all the world except the true owner. Consistently with this view, the early English statutes of limitations protected the possessor negatively, by barring the right of the true owner. See LIGHTWOOD, POSSESSION OF LAND, p. 153. Moreover, the policy of the law was to safeguard possession as such. See POLLOCK & MAITLAND, HISTORY OF THE ENGLISH LAW, Vol. II, p. 42. And this is believed to be the true basis of the theory of "tacking interests" by successive possessors. See 3 HARV. L. REV. 322. In recognition of this view, an adverse possessor is allowed to have ejectment against any one not claiming under the outstanding title. *Asher* v. *Whitlock*, L. R. 1 Q. B. 1; *contra*, *Doe d. Carter* v. *Barnard*, 13 Q. B. 945. See 20 HARV. L. REV. 563. It is also well settled that an adverse possessor may have trespass against third parties. *Reed* v. *Price*, 30 Mo. 442; *Frisbee* v. *Town of Marshall*, 122 N. C. 760, 30 S. E. 21. As between the owner and one in possession, the latter is the proper plaintiff to bring trespass. *Campbell* v. *Cushman*, 4 U. C. Q. B. 9. If the land is held adversely, the true owner cannot have trespass. *Cook* v. *Foster*, 7 Ill. 652; *Ruggles* v. *Sands*, 40 Mich. 559. But in the case of a permanent injury there is a possibility that the true owner may reëstablish his possession and sue. Consequently, to allow the adverse possessor to recover for permanent depreciation might lead to a double recovery against the trespasser. This practical difficulty could be met by requiring the damages to be paid into court, to be held for the true owner until the statutory period had run. See 20 HARV. L. REV. 563. It seems, therefore, that the adverse possessor should recover for permanent injuries. The authorities, however, support the view of the prin-